

**DAVID S. RUNION**  
Claimant

VS.

**JOE SELF CHEVROLET**  
Respondent

AND

**KANSAS MOTOR DEALERS**  
Insurance Carrier

) ) ) ) ) ) ) ) ) )

## ORDER

## ISSUES

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Order of the Administrative Law Judge should be affirmed.

The Workers Compensation Act requires an injured worker to provide notice of accident to the employer within a certain number of days or be forever barred from receiving benefits for that injury. The applicable statute, K.S.A. 44-520, provides:

"Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice."

Claimant alleges he has sustained accidental injury to his right arm which has resulted in carpal tunnel syndrome. Claimant did not realize he had experienced either an accident or an injury involving the right arm until he underwent nerve conduction tests in August 1994, while undergoing treatment for injuries to the left hand he previously sustained at work on March 21, 1994. Because of the treatment for the left hand injury, claimant had not worked since March 21, 1994. Because the nerve conduction tests were not performed until August 15, 1994, claimant was unaware he had experienced an accident or an injury to the right wrist for a period of approximately 147 days after his last day of work. However, claimant did testify he had experienced right wrist pain approximately six months before the accident of March 21, 1994, but did not experience right wrist pain during treatment for the left wrist.

Assuming claimant has developed right carpal tunnel syndrome as a result of his work for the respondent, which is a questionable assumption based upon the lack of medical evidence at this time, the claimant has failed to provide timely notice of accident. Although lack of knowledge of an accident may constitute just cause for failure to notify the employer within ten (10) days of the event, the existence of just cause merely extends the period to provide notice to seventy-five (75) days from the date of accident. Because claimant has failed to provide notice of accident within seventy-five (75) days of its occurrence, his claim for benefits must be denied. Because of this finding, the issue of accidental injury is moot.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark entered in this proceeding on January 3, 1995, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March, 1995.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER**DISSENT**

We respectfully dissent with the majority decision of the Appeals Board. The Workers Compensation Act, in general, and the notice statute, in specific, should be construed liberally to provide the protection of the Act to both employers and employees. See the legislative mandate in K.S.A. 44-501(g).

The majority of the Appeals Board overlooks the language of K.S.A. 44-520 which indicates the failure to provide notice within seventy-five (75) days of the date of accident is not fatal in three situations: (1) Where the employer or its duly authorized agent has actual knowledge of the accident; (2) where the employer was unavailable to receive the notice; and (3) where the employee was physically unable to give the required notice. Because an injured worker is unable to provide notice of an accident or injury they are not aware they have experienced, the situation falls within the foregoing exception of being unable to provide notice. Therefore, claimant's failure to provide notice within seventy-five (75) days of the date of accident is not fatal and the claimant is entitled to benefits under the Workers Compensation Act, if he is able to prove the right carpal tunnel syndrome was caused by his work.

---

BOARD MEMBER

---

BOARD MEMBER

c: Paul Hogan, Wichita, Kansas  
Gary Winfrey, Wichita, Kansas  
John D. Clark, Administrative Law Judge  
George Gomez, Director